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No. 85-1561

In the Supreme Court of the United States

OCTOBER TERM, 1985

ORGANIZED FISHERMEN OF FLORIDA, ET AL., PETITIONERS

v.

DONALD P. HODEL, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether, on the facts of this case, the Secretary of the Interior may be equitably estopped from enforcing regulations governing commercial fishing in Everglades National Park.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 775 F.2d 1544. The opinions of the district court (Pet. App. 28a-72a, 73a-97a) are reported at 590 F. Supp. 805 and 488 F. Supp. 1351, respectively.

JURISDICTION

The judgment of the court of appeals (Pet. App. 98a-100a) was entered on November 15, 1985, and a petition for rehearing was denied on December 23, 1985 (Pet. App. 101a-102a). The petition for a writ of certiorari was filed on March 24, 1986. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1934, Congress authorized the establishment of what is now Everglades National Park at such time that title to sufficient land in the area of the Everglades became

vested in the United States. 16 U.S.C. 410. This authorization provided that the Park shall be administered in accordance with the conservation function of the National Park Service (NPS) as set forth in the National Park Service Organic Act, 16 U.S.C. 1 *et seq.* Section 1 of the Act, 16 U.S.C. 1, establishes that the "fundamental" purpose of the NPS is "to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such [a] manner and by such means as will leave them unimpaired for the enjoyment of future generations." The Act vests broad power in the Secretary of the Interior to perform this conservation function, including the power to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks." 16 U.S.C. 3.

The formal establishment of the Park in 1947 was preceded by donations of land and money to the federal government by the State of Florida. While the Florida legislature was considering these donations, several state officials sought clarification from the NPS on the effect that establishment of the Park would have on commercial fishing. At each juncture, the NPS expressed its intent to permit such fishing to continue, but only where it did not conflict with the Service's paramount duty to conserve natural resources. See Pet. App. 11a-15a.

In 1947, after execution of a memorandum of understanding in 1944, the State of Florida deeded lands to the United States to be made part of the Park and the Park was formally established. 16 U.S.C. 410e. Although the deed expressly reserved to the State oil, gas, and mineral rights (see *ibid.*), neither the deed nor the memorandum of understanding made any mention of commercial fishing.

2. Following establishment of the Park, the NPS promulgated rules and regulations governing fishing in the Park pursuant to its authority in 16 U.S.C. 3. "[O]ver the

years, the NPS has forbidden fishing in certain areas, has limited the type of equipment which could be used, has restricted the number of some types of fish which could be caught, and has forbidden the taking of certain species of fish." Pet. App. 55a. Following a series of complaints concerning reductions in sport fish populations, the NPS undertook an extensive study of the Park's fishery resources, including public hearings and use of computerized data analysis. *Id.* at 6a-8a. Based on this study, the Secretary of the Interior issued proposed rules in 1979 and, following public comment, final rules in 1980 to conserve the Everglades fishery. *Id.* at 8a-9a; 44 Fed. Reg. 53541 (1979); 45 Fed. Reg. 10350 (1980). These rules establish sanctuaries for endangered and threatened species within the Park, restrict recreational shellfish harvesting, establish bag limits for fish species, and eliminate commercial fishing in the Park as of December 31, 1985. 36 C.F.R. 7.45(e) - (h) (Pet. App. 114a-131a).

3. a. Petitioners filed this action in the United States District Court for the Southern District of Florida seeking declaratory and injunctive relief prohibiting the Secretary from enforcing the final regulations issued in 1980. The district court denied petitioners' motion for a preliminary injunction (Pet. App. 73a-97a) and, on cross-motions for summary judgment, entered judgment in favor of the Secretary (*id.* at 28a-72a). The district court held, inter alia, that petitioners were not third-party beneficiaries of a contract between the State of Florida and the United States to permit commercial fishing in the Park because Congress made no mention of such fishing in the legislation establishing the Park (*id.* at 62a-63a) and that the Secretary's regulations were not arbitrary and capricious (*id.* at 45a-61a).

b. The court of appeals affirmed. Pet. App. 1a-27a. The court of appeals held that the representations of NPS officials to state officials before establishment of the Park were

insufficient to create a contract on the part of the United States to permit commercial fishing in perpetuity (*id.* at 10a-20a), that those representations could not support an application of equitable estoppel against the government because they did not misrepresent the facts and reliance on them would have been unreasonable (*id.* at 20a-23a), and that the regulations complied with the Administrative Procedure Act (*id.* at 23a-27a).

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or of any other court of appeals. Review by this Court is therefore not warranted.

Petitioners argue (Pet. 27-39) that the Secretary should be equitably estopped from enforcing the regulations governing use of the Park's fishery resources.[1] The court of appeals assumed that estoppel could lie against the government (Pet. App. 21a), but it concluded that petitioners' "argument fails because the representations made by NPS officials were simply not promises of the type upon which all estoppel claims must be based" and petitioners "could not reasonably believe that commercial fishing would never run afoul of NPS' reasonable exercise of its conservation function" (*id.* at 21a-22a).[2] In so finding, the

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[1]Petitioners do not now argue that the regulations are arbitrary and capricious under the APA.

[2]Because the court of appeals assumed (without deciding) that the government may be estopped in appropriate circumstances, this case does not present any occasion for revisiting the question whether the government may ever be subject to equitable estoppel. See, *e.g.*, *Schweiker* v. *Hansen*, 450 U.S. 785 (1981) (holding that government may not be estopped from enforcing regulation); *FCIC* v. *Merrill*, 332 U.S. 380 (1947) (same). For the same reason, there is no reason to hold this case pending the Court's decision in *Lyng* v. *Payne*, No. 84-1948 (argued Mar. 24, 1986), which presents the question whether the

court of appeals faithfully applied this Court's decision in *Heckler* v. *Community Health Services*, 467 U.S. 51, 61 (1984), in which the Court held that "however heavy the burden might be when an estoppel is asserted against the Government, the private party surely cannot prevail without at least demonstrating that the traditional elements of an estoppel are present."

As the Court explained in *Community Health Services*, equitable estoppel requires reasonable reliance on definite misrepresentations of fact. 467 U.S. at 59, quoting Restatement (Second) of Torts § 894(1) (1979). Petitioners can meet neither requirement. There were no misrepresentations because the NPS never renounced its conservation duties in favor of commercial fishing—to the contrary, it made clear that the extent of commercial fishing would be subject to regulation for conservation purposes. See Pet. App. 11a-15a. And even if the statements could be interpreted in the fashion suggested by petitioners, any reliance on those statements for the proposition that the NPS was renouncing for all time its statutorily imposed conservation function in favor of local commercial fishing interests would have been wholly unreasonable.[3]

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government may be estopped from enforcing a regulatory filing deadline for emergency loan applications. Regardless of the outcome of that case, estoppel would be unavailable here because of the absence of misrepresentations and reasonable reliance.

[3]Petitioners' claim (Pet. 29 n.11, 34) of a conflict with *City of Alexandria* v. *United States*, 737 F.2d 1022 (Fed. Cir. 1984), and *United States* v. *Huebner*, 752 F.2d 1235 (7th Cir. 1985), cert. denied, No. 84-1613 (Oct. 7, 1985), is erroneous. The courts in both cases, like the court of appeals here, relied on *Community Health Services* in concluding that the government could not be estopped on the facts presented. Indeed, the private party in *Huebner*, like petitioners, pointed to "extensive [written] correspondence" (752 F.2d at 1244) in support of his claim, yet the court refused to estop the government on that basis.

Finally, petitioners' apparent argument (Pet. 34-37) that state law prevents the federal government from regulating the Park fishery is wholly unavailing. See Pet. App. 18a-20a. Their contention that NPS officials represented that any regulation of commercial fishing in the Park would be conducted solely pursuant to state law is unsupported by the statements themselves or by the 1944 memorandum of understanding and the 1947 deed. Nor is there any other indication that Congress (or the NPS, for that matter) intended here to subordinate the otherwise controlling federal statute establishing conservation as the primary function of the NPS to the vagaries of state law.[4]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[4]Because the Florida law does not constrain NPS in the exercise of its conservation function, there is no merit to petitioners' contention (Pet. 36-37 & nn.16-18) that the court of appeals was required to seek a definitive interpretation of the state statute from the Florida courts.